

FCC MAIL SECTION
Federal Communications Commission

DA 99-448

MAR 11 10 26 AM '99

Before the
Federal Communications Commission
 DISPATCHED BY Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Deer Lodge, Hamilton and Shelby, Montana))

MM Docket No. 99-70

RM-9380

NOTICE OF PROPOSED RULE MAKING

Adopted: February 24, 1999**Released: March 5, 1999****Comment Date: April 26, 1999****Reply Date: May 11, 1999**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Marathon Media of Montana, L.P., licensee of Station KBMG, Hamilton, Montana, and Robert C. Toole, licensee of Station KQRV, Deer Lodge, Montana ("petitioners"), requesting changes at Deer Lodge, Hamilton and Shelby, Montana.

2. Marathon Media of Montana, L.P. requests the substitution of Channel 242C for Channel 240C3 at Hamilton, Montana, and modification of its license for Station KBMG to specify operation on Channel 242C. Robert C. Toole requests the substitution of Channel 245C1 for Channel 243C2 at Deer Lodge, Montana, and modification of his license for Station KQRV to specify the new channel. To accommodate the new allotments at Hamilton and Deer Lodge, petitioners further request the substitution of Channel 244C1 for Channel 242C1 at Shelby, Montana, and modification of the license for Station KZIN to specify operation on Channel 244C1.¹ According to petitioners, Station KBMG, Hamilton, currently provides service to 30,041 persons and will serve 120,494 persons on Channel 242C, while Station KQRV, Deer Lodge currently serves 53,310 people but if upgraded, would serve 95,800 people. Petitioners have stated their intent to file applications to upgrade their respective stations. Petitioners have

¹ Tri-County Radio Corp., licensee of Station KZIN, Shelby, Montana, submitted comments supporting the proposal for Deer Lodge and Hamilton, consenting to the modification of Station KZIN at Shelby. Since Tri-County Radio Corp. has consented to the modification, issuance of an Order to Show Cause is not necessary.

also stated their willingness to reimburse the licensee of Station KZIN, Shelby, Montana, for its reasonable expenses resulting from the modification of its license to Channel 244C1.

3. We believe the proposal warrants consideration since the substitutions at Hamilton and Deer Lodge would provide expanded service to both communities. A staff engineering analysis has determined that Channel 242C can be allotted to Hamilton, Channel 245C1 to Deer Lodge, and Channel 244C1 to Shelby, Montana, in compliance with the Commission's spacing requirements.² Since Hamilton and Shelby are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for these allotments. As requested, we shall propose to modify the license for Station KBMG, Hamilton, to specify operation on Channel 242C, the license for Station KQRV, Deer Lodge, to specify operation on Channel 245C1, and the license for Station KZIN, Shelby, to specify operation on Channel 244C1. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 242C at Hamilton, Channel 245C1 at Deer Lodge or Channel 244C1 at Shelby or require petitioners to demonstrate the availability of additional equivalent class channels for use by such parties.

4. Whenever an existing licensee or permittee is ordered to change frequency to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station for costs incurred. See Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967). Petitioners have stated their intention to reimburse Station KZIN for the reasonable costs incurred in changing frequency.

5. In view of the fact that the proposed allotment would provide expanded service to Deer Lodge and Hamilton, Montana, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 242C2 at Hamilton, Channel 245C1 at Deer Lodge and Channel 244C1 at Shelby. Therefore, we will seek comments on the proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

Community	Channel No.	
	Present	Proposed
Deer Lodge, Montana	243C2	245C1
Hamilton, Montana	240C3, 251C3	242C, 251C3
Shelby, Montana	242C1, 250C	244C1, 250C

6. IT IS FURTHER ORDERED, That the Secretary Shall Send, by Certified Mail, Return

² The coordinates for Channel 242C2 at Hamilton are 46-48-09 and 113-58-21. The coordinates for Channel 245C1 at Deer Lodge are 46-06-03 and 112-57-00. The coordinates for Channel 244C1 at Shelby are 48-19-42 and 112-02-03.

Receipt Requested, a copy of this Notice of Proposed Rule Making to the following:

George H. Shapiro
Susan A. Marshall
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D. C. 20036-5339
(Counsel for Tri-County Radio Corp.)

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **April 26, 1999**, and reply comments on or before **May 11, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

Lee J. Peltzman
Shainis & Peltzman, Chartered
1901 L Street, N.W., Suite 290
Washington, D. C. 20036
(Counsel for Marathon Media
of Montana, L.P.)

F. Joseph Brinig
1427 Dolley Madison Boulevard
McLean, Virginia 22101
(Counsel for Robert C. Toole)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.